

Checklist	Federal requirement	FR reference	FR promulgation date	State authority
120	Wood Preserving; Amendments to Listings and Technical Requirements.	57 FR 61492	12/24/92	TCA 68-212-104(7); 68-212-106(a)(1); 68-212-107(d)(1),(3)&(4); 68-212-108(a)(1),(c)&(d); TRC 1200-1-11-.02(4)(a); .06(26)(a); .05(23)(a).
122	Recycled Used Oil Management Standards; Technical Amendments and Corrections I.	58 FR 26420 58 FR 33341	5/3/93 6/17/93	TCA 68-211-105(c); 68-211-106(a)(1)&(2); 68-211-107(a); 68-211-111(d); 68-211-1001 <i>et seq.</i> ; 68-212-104(7); 68-212-106(a)(1); 68-212-107(a),(d)(1)&(d)(3); TRC 1200-1-11-.02(1)(e); .11(1)(a); .02(1)(d)2(x-xi); .06(1)(b)2(ii); .05(1)(b)2(iii).
123	Land Disposal Restrictions; Renewal of the Hazardous Waste Debris Case-by-Case Capacity Variance.	58 FR 28506	5/14/93	TCA 68-212-104(7); 68-212-106(a) (1)&(2); 68-212-107(a),(d)(1),(d)(3) & (d)(9); TRC 1200-1-11-.10(2)(a).
124	Land Disposal Restrictions for Ignitable and Corrosive Characteristic Wastes whose Treatment Standards were Vacated.	58 FR 29860	5/24/93	TCA 68-212-104(7); 68-212-106 (a)(1) & (2); 68-212-107(a),(d)(1),(d)(3)&(d)(9); TRC 1200-1-11-.06(1)(b)2(v-vi); .10(1)(a)1,(a)(5)&(a)(9); .10(2)(a); .10(3)(a); .07(10)(a).

Approval of Tennessee's program revisions shall become effective July 7, 1995, unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period.

If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

EPA shall administer any RCRA hazardous waste permits, or portions of permits that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

C. Decision

I conclude that Tennessee's applications for these program revisions meet all of the statutory and regulatory requirements established by RCRA. Accordingly, Tennessee is granted final authorization to operate its hazardous waste program as revised.

Tennessee now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision application and previously approved authorities. Tennessee also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take

enforcement actions under Section 3008, 3013, and 7003 of RCRA.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Tennessee's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities.

This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926, 6974(b)).

Dated: April 14, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95-11144 Filed 5-5-95; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 6

Federally Supported Health Centers Assistance Act of 1992

AGENCY: Public Health Service, HHS.
ACTION: Final rule.

SUMMARY: The Secretary of Health and Human Services (the "Secretary"), in consultation with the Attorney General, issues the following rules under the "Federally Supported Health Centers Assistance Act of 1992." The Act provides for liability protection for certain health care professionals and entities. This rule sets forth information whereby an entity or a person can determine when, and the extent to which, it is likely to be protected under the Act.

EFFECTIVE DATE: May 8, 1995.

FOR FURTHER INFORMATION CONTACT: Richard C. Bohrer, Director, Division of Community and Migrant Health, Bureau of Primary Health Care, Health Resources and Service Administration, 4350 East/West Highway, Bethesda, Maryland 20814, Phone: (301) 594-4300.

SUPPLEMENTARY INFORMATION: Section 224(a) of the Public Health Service Act (the Act), (section 233(a) of Title 42 of the United States Code), provides that the remedy against the United States provided under the Federal Tort Claims Act (FTCA) resulting from the performance of medical, surgical, dental or related functions by any commissioned officer or employee of the Public Health Service while acting within the scope of his office or

employment shall be exclusive of any other civil action or proceeding. Public Law 102-501 provides that, subject to its provisions, certain entities and officers, employees and contractors of entities shall be deemed to be employees of the Public Health Service within the exclusive remedy provision of section 224(a). This rule implements certain provisions of Public Law 102-501.

On August 19, 1994, the Secretary published a Notice of Proposed Rulemaking in the **Federal Register** (59 FR 42790) to implement Public Law 102-501. The deadline for the submission of comments was September 19, 1994.

Changes to Proposed Regulations

Section 6.6(d) of the proposed rule provides that acts and omissions related to services provided to individuals who are not patients of a covered entity will be covered only if the Secretary determines that provision of such services will benefit the community served by the entity; facilitate the provision of services to patients of the entity; or are otherwise required to be provided under an employment contract or similar arrangement between the entity and the covered individual.

The final rule adds a new § 6.6(e) which lists examples of services to individuals who are not patients of a covered entity that will be covered under § 6.6(d).

Response to Comments

We received six comment letters: two from groups representing interested organizations, one from a U.S. Senator, and three from Community Health Centers. A discussion of these comments and our responses follow.

Comment 1: Three commenters wrote to express support for the proposed rule.

Comment 2: Two commenters expressed concern regarding coverage for services provided off-site and to persons not registered with the Center. One commenter requested that such coverage be guaranteed for providers. Another provider requested clarification regarding when a patient becomes a CHC enrolled patient.

Response: It is not feasible to determine in advance of an actual claim whether all of the activities of a provider are covered under FTCA, since the individual is covered only for activities within the scope of employment with the health center and activities within the scope of the approved Federal grant project. This is consistent with the treatment of Federal employees under the FTCA. Moreover, this rule is not intended to constitute,

and does not constitute, a comprehensive notice pertaining to any provision of Pub. L. 102-501 except to the extent that procedures pertaining to implementation of Pub. L. 102-501 are described explicitly therein. The applicability of Pub. L. 102-501 and 42 U.S.C. 233(a) to a particular claim or case will depend upon the determination or certification (as appropriate) by the Attorney General that the individual or entity is covered by Pub. L. 102-501 and was acting within the scope of employment, in accordance with normal Department of Justice procedures.

However, we agree with the commenter regarding the need for additional clarification regarding coverage for services provided off-site and to persons not registered with the Center. Thus, we have added a new § 6.6(e) to the regulations, including the examples set forth in the preamble to the Notice of Proposed Rulemaking. This will provide in codified form guidance on coverage of common arrangements. In drafting this rule, we cannot foresee every possible situation, however, so covered entities and covered individuals who are uncertain whether their treatment of individuals who are not patients of the covered entity will be within the protection afforded by Public Law 102-501 should apply to the Secretary for a specific determination under § 6.6(d).

Comment 3: One commenter requested that the regulation provide for consultative and risk management functions.

Response: We did not address these functions in the regulation because they are not addressed in the statute being implemented, and because we currently provide assistance in these areas as a part of our management of the relevant grant programs. In addition to the ongoing technical assistance available to address risk management and Quality Assurance issues, we are considering enhancing the scope and diversity of such activities.

Comment 4: One commenter expressed concern about its ability to take advantage of FTCA coverage unless Congress extends the coverage past December 31, 1995.

Response: This is not an issue under the scope of the regulation. However, we anticipate that Congress will consider an extension of the program next year. We have accordingly removed the reference to a specific date from section 6.6(a), so that should Congress extend the program, no further change to the rule will be needed.

Waiver of Delay in Effective Date

This final rule is effective "upon issuance". The Secretary has found that good cause exists to waive the requirement under the Administrative Procedure Act (5 U.S.C. 553(d)) that the effective date for a regulation be not less than 30 days from the date of publication. It is cost effective to permit health centers to take advantage of the statutory liability protection that is clarified by these regulations at the earliest possible date. Until these regulations are effective, health centers will continue to pay private insurance premiums for liability protection that is provided for under the FTCA.

Economic Impact

Executive Order 12866 requires that all regulations reflect consideration of alternatives, of costs, benefits, incentives, equity, and availability of information. Regulations which are "significant" because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis. In addition, the Regulatory Flexibility Act of 1980 requires that we include an analysis of all rules that significantly impact small businesses.

These regulations provide information whereby health care entities or individuals can determine when, and to what extent, they are likely to be protected against certain malpractice claims under the FTCA. Therefore, the Secretary certifies that these regulations are not significant under Executive Order 12866 and that they will not have a significant effect on a substantial number of small entities. For this reason, a regulatory analysis is not required.

Paperwork Reduction Act of 1980

This rule contains no information collection or reporting requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980.

List of Subjects in 42 CFR Part 6

Grant programs—Health.

Dated: January 18, 1995.

Philip R. Lee,
Assistant Secretary for Health.

Approved: March 24, 1995.

Donna E. Shalala,
Secretary.

Part 6 is added to chapter I of title 42 to read as follows:

PART 6—FEDERAL TORT CLAIMS ACT COVERAGE OF CERTAIN GRANTEES AND INDIVIDUALS

Sec.

- 6.1 Applicability.
- 6.2 Definitions.
- 6.3 Eligible entities.
- 6.4 Covered individuals.
- 6.5 Deeming process for eligible entities.
- 6.6 Covered acts and omissions.

Authority: Sections 215 and 224 of the Public Health Service Act, 42 U.S.C. 216 and 233.

§ 6.1 Applicability.

This part applies to entities and individuals whose acts and omissions related to the performance of medical, surgical, dental, or related functions are covered by the Federal Tort Claims Act (28 U.S.C. 1346(b) and 2671–2680) in accordance with the provisions of section 224(g) of the Public Health Service Act (42 U.S.C. 233(g)).

§ 6.2 Definitions.

Act means the Public Health Service Act, as amended.

Attorney General means the Attorney General of the United States and any other officer or employee of the Department of Justice to whom the authority involved has been delegated.

Covered entity means an entity described in § 6.3 which has been deemed by the Secretary, in accordance with § 6.5, to be covered by this part.

Covered individual means an individual described in § 6.4.

Effective date as used in § 6.5 and § 6.6 refers to the date of the Secretary's determination that an entity is a covered entity.

Secretary means the Secretary of Health and Human Services (HHS) and any other officer or employee of the Department of HHS to whom the authority involved has been delegated.

Subrecipient means an entity which receives a grant or a contract from a covered entity to provide a full range of health services on behalf of the covered entity.

§ 6.3 Eligible entities.

(a) *Grantees.* Entities eligible for coverage under this part are public and nonprofit private entities receiving Federal funds under any of the following grant programs:

- (1) Section 329 of the Act (relating to grants for migrant health centers);
- (2) Section 330 of the Act (relating to grants for community health centers);
- (3) Section 340 of the Act (relating to grants for health services for the homeless); and
- (4) Section 340A of the Act (relating to grants for health services for residents of public housing).

(b) *Subrecipients.* Entities that are subrecipients of grant funds described in paragraph (a) of this section are eligible for coverage only if they provide a full range of health care services on behalf of an eligible grantee and only for those services carried out under the grant funded project.

§ 6.4 Covered individuals.

(a) Officers and employees of a covered entity are eligible for coverage under this part.

(b) Contractors of a covered entity who are physicians or other licensed or certified health care practitioners are eligible for coverage under this part if they meet the requirements of section 224(g)(5) of the Act.

(c) An individual physician or other licensed or certified health care practitioner who is an officer, employee, or contractor of a covered entity will not be covered for acts or omissions occurring after receipt by the entity employing such individual of notice of a final determination by the Attorney General that he or she is no longer covered by this part, in accordance with section 224(i) of the Act.

§ 6.5 Deeming process for eligible entities.

Eligible entities will be covered by this part only on and after the effective date of a determination by the Secretary that they meet the requirements of section 224(h) of the Act. In making such determination, the Secretary will receive such assurances and conduct such investigations as he or she deems necessary.

§ 6.6 Covered acts and omissions.

(a) Only acts and omissions occurring on and after the effective date of the Secretary's determination under § 6.5 and before the later date specified in section 224(g)(3) of the Act are covered by this part.

(b) Only claims for damage for personal injury, including death, resulting from the performance of medical, surgical, dental, or related functions are covered by this part.

(c) With respect to covered individuals, only acts and omissions within the scope of their employment (or contract for services) are covered. If a covered individual is providing services which are not on behalf of the covered entity, such as on a volunteer basis or on behalf of a third-party (except as described in paragraph (d) of this section), whether for pay or otherwise, acts of omissions which are related to such services are not covered.

(d) Only acts and omissions related to the grant-supported activity of entities are covered. Acts and omissions related

to services provided to individuals who are not patients of a covered entity will be covered only if the Secretary determines that:

(1) The provision of the services to such individuals benefits patients of the entity and general populations that could be served by the entity through community-wide intervention efforts within the communities served by such entity;

(2) The provision of the services to such individuals facilitates the provision of services to patients of the entity; or

(3) Such services are otherwise required to be provided to such individuals under an employment contract or similar arrangement between the entity and the covered individual.

(e) *Examples:* The following are examples of situations within the scope of paragraph (d) of this section:

(1) A community health center deemed to be a covered entity establishes a school-based or school-linked health program as part of its grant supported activity. Even though the students treated are not necessarily registered patients of the center, the center and its health care practitioners will be covered for services provided, if the Secretary makes the determination in paragraph (d)(1) of this section.

(2) A migrant health center requires its physicians to obtain staff privileges at a community hospital. As a condition of obtaining such privileges, and thus being able to admit the center's patients to the hospital, the physicians must agree to provide occasional coverage of the hospital's emergency room. The Secretary would be authorized to determine that this coverage is necessary to facilitate the provision of services to the grantee's patients, and that it would therefore be covered by paragraph (d)(2) of this section.

(3) A homeless health services grantee makes arrangements with local community providers for after-hours coverage of its patients. The grantee's physicians are required by their employment contracts to provide periodic cross-coverage for patients of these providers, in order to make this arrangement feasible. The Secretary may determine that the arrangement is within the scope of paragraph (d)(3) of this section.

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